

Atty. Dkt. No. 050851-0101

EXAMINER INTERVIEW SUMMARY: A brief conversation was held between the Examiner and the undersigned on June 11, 2009. The examiner stated that the section 101 panel at the USPTO considers the claim phrase "or having calculated, by a computing apparatus" and other claim phrases using the word "having" in claim 1, to be redundant.

REMARKS

Claim 1 has been amended. A new dependent claim has been added to further clarify applicant's invention. Accordingly, claims 1-4 and 23-26 and 28 are pending in the application.

This Supplemental Amendment removes the "having" phrases in the claim 1, based on a request from Examiner Frenel, who stated that he and the PTO 101 panel consider these "having" phrases to be redundant. Applicant's representative has reviewed the case law in this area, specifically *BMC Resources, Inc. v. Paymentech L.P.*, 498 F. 3d 1373, 1380-82 (Fed. Cir. 2008) and *MuniAuction Inc. v. Thomson Corp.*, 523 F. 3d 1318, 1329-1330 (Fed. Cir. 2008), *cert denied*, No. 08-847 (March 9, 2009). Based on these two Federal Circuit cases, it is clear that the amended "calculating, by a computing apparatus" "summing, by a computing apparatus," "determining, by a computing apparatus," "calculating by a computing apparatus," and "maintaining" operations encompass, not only the direct performance of these operations by a first party, but also the first party contracting out or directing a third party to have the computing apparatus operations performed by the third party, and/or the "maintaining" operation performed by the third party. Applicant intends that these recited claim operations, as hereby amended, continue to encompass the operation of directing or controlling one or more third parties by contract or otherwise to perform one or more of these steps. The Supplemental Amendment removes the language "by a pension plan," and also "by the pension plan" in two instances, and adds the dependent claim 28, in order reinforce this interpretation, since, as a practical matter, most, if not all public pension systems contract or direct third party actuaries to perform the calculations and/or actuarial analysis. To the extent that there is considered to be a disclaimer by this amendment, Applicant states that for the purposes of interpreting claim 1 as amended herein, applicant disclaims by this amendment, activity performed by third parties not under contract to

Atty. Dkt. No. 050851-0101

perform one or more of these operations, or directed or controlled to perform one or more of these operations.

Note that various antecedence issues were also corrected in the second calculating step.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date June 12, 2009

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874